



## **Mineral Rights Integration Information Sheet**

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Idaho has seen increased interest from companies seeking to drill for oil and gas. Mineral interest ownership (including oil and gas rights) and how those resources can be extracted is often complicated.

Oil and gas resources have the potential to be pooled in large geologic formations below the surface, with a patchwork of different mineral interest ownerships comprising this formation. Wells typically drain oil or gas owned by multiple mineral interest owners. The legal principle of correlative rights establishes that each mineral interest owner affected by a well has a right to a reasonable share of the well's production, equal to the size of the mineral acres owned, and in proportion to number of acres in a given drilling unit.

Oil and gas mineral interests are divided into drilling spacing units for the purposes of ensuring proper spacing of the wells, which ensures the proper extraction of resources while protecting correlative rights. Idaho's Oil & Gas Conservation Commission (Commission) in accordance with state law ([Idaho Code § 47-321](#)), has set the standard drilling unit at 640 acres for natural gas and 40 acres for oil.

Idaho requires an operator developing oil and gas resources to pay production royalties to the mineral interest owners in these established drilling units, on a pro rata basis according to the number of mineral acres held by each owner in the unit. Pro rata means that every mineral interest owner is paid a royalty in proportion to the amount of mineral acres he or she owns. This requirement is provided in Idaho law ([Idaho Code § 47-322](#)) to ensure all mineral interest owners are appropriately compensated for production of their minerals.

What happens if within the patchwork of mineral interest owners some want to drill and others do not? Or perhaps mineral interest owners or their heirs can't be located? Most oil producing states allow for voluntary and involuntary [integration](#), which allows those who want to drill for resources to move forward while making sure other mineral interest owners in the drilling unit receive their fair share financially.

In accordance with Idaho's Oil and Gas Rules ([IDAPA 20.07.02](#)), and after good faith negotiations, it would take a 55% majority of mineral interest owners supporting the application (by leasing or participating as a working interest owner) in order for a well operator to apply for an Integration Order with the Commission.

The integration process begins with the well operator serving the integration application to all mineral interest owners within the drilling spacing unit. The applicant sends a copy of the integration application to the Commission along with affidavits verifying all mineral interest owners have been served. The mineral interest owners have 21 days of being served to respond. A hearing date is set and the applicant must give notice to mineral interest owners as to when and where the Commission will hear the integration application.

The Commission, or a hearing officer on their behalf, conducts a hearing, listening to testimony from the applicant and mineral interest owners in the drilling unit. If all statutory and regulatory requirements are met, the Commission shall issue an integration order incorporating terms and conditions that are just and reasonable. Integration orders must provide the following options for the unleased mineral interest owners to participate in the drilling and production of oil and gas within the unit.

- 1) Lease (Voluntary)** – This can be done by signing a lease with an operator (applicant) under terms agreed on by both parties. Anyone who leases can negotiate the terms of the lease, including, but not limited to the royalty and bonus. Voluntary leasing can also be accomplished by signing a Commission approved lease which limits the negotiating terms.
- 2) Participate as a Working Interest Owner** – The mineral interest owner will pay the proportionate share of the actual costs of drilling the well up front as an investment, then receive their proportionate share of the production of the well. They will not get their investment refunded if the well turns up dry.
- 3) Elect to be a Non-Consenting Working Interest Owner** – Mineral interest owners can choose to invest without paying drilling costs upfront. They will receive a 1/8 royalty until the operator has recovered up to 300 percent of the non-consenting working interest owner's share of the drilling and operating costs. This is called a risk-penalty and is considered the working interest owners' investment in the well, similar to an investment in a business. Once the penalty is met, they will receive 100 percent of their proportionate share of the production of the well from that point forward. They are not required to pay the risk-penalty if the well turns up dry.
- 4) Deemed Leased** – Mineral interest owners can decide not to enter any agreement with an operator. They will be deemed leased, under terms and conditions established by the Commission in the integration order, and given 1/8 royalty and receive a bonus payment based on the highest bonus paid in that drilling unit. They are not subject to paying any costs of the well nor is there any risk-penalty.

## **Mineral Rights Integration Frequently Asked Questions**

### ***Q. How do I find out if I own the mineral estate on my property?***

**A.** In the State of Idaho, the mineral estate is considered part of the sale with the surface estate unless the mineral estate has been specifically reserved or separated. Your county assessor should have record of the mineral estate on your property. If the documents show a reserve by a previous owner it means you do not own the mineral estate. If the documents show a reserve by the Idaho Department of Lands or in the federal patent, you do not own the mineral estate. If you own the mineral estate no reservation will be shown against the property.

Title insurance policies do not necessarily disclose whether the mineral estate has been previously severed. If a title insurance policy was previously issued insuring your ownership interest, the title company that issued the title insurance policy is able to look it up for you. If mineral interests are expressly exempted from the policy's coverage, the title company may be able to conduct a mineral title examination for you. Contact your title company for further information.

If the property was previously owned by the State of Idaho, you may check whether the State retained mineral estate ownership by going to <http://gis1.idl.idaho.gov/DLR/> or by calling 208-334-0200.

### ***Q. What if there are different owners for the surface and mineral estates?***

**A.** This is called a split estate. Let's say Sam owns both the surface and mineral estates on his property, then sold just the surface estate to his brother Fred. Fred may build a house and live on the property, but since Sam retained his mineral estate, Sam is the person an oil and gas company will approach to sign an oil and gas lease and Sam will receive royalties from the lease.

### ***Q. A company has approached me about drilling a well in my section. What options do I have?***

**A.** If you are both the surface and mineral interest owner, you have three basic options: 1) voluntarily negotiate a mineral lease agreement, 2) request to participate in the well, or 3) in the absence of an agreement, possibly be subject to integration before the Commission.

### ***Q. Do I need a Surface Use Agreement?***

**A.** If you own the surface estate and the drilling company wants to cross your property, or if they want to put the well on your property, the drilling company must attempt to reach a Surface Use Agreement with you that, at a minimum, compensates you for lost agricultural income and lost value of improvements

directly caused by the oil and gas production. If you are unable to reach agreement you can file an objection with the Department of Lands, which will determine a surface use bond to be held by the Department and paid to you if the affected lands are not reclaimed.

***Q. I've been told that our minerals are being integrated. What does that mean?***

**A.** Integration is a process used to ensure the orderly development of the crude oil and natural gas resources in the State of Idaho. It also ensures that all mineral interest owners within a specific drilling unit receive their fair share of the profits of the minerals.

When a mineral interest owner cannot be located or the mineral interest owner chooses not to participate or sign a lease agreement, the operator may apply for integration through the Commission. The Commission decides the terms and conditions which must be met for the drilling to move forward, and the Commission will set a specific time frame for the mineral interest owner to decide on one of four options: agree to a lease, participate as working owner interest, elect to be a non-consenting working interest owner, or be deemed leased.

***Q. How do I know the cash bonus and conditions that are being offered are fair?***

**A.** The terms and conditions of mineral lease agreements are negotiable and terms and prices paid vary based on geographical regions. Although many factors influence the price paid, generally the value of the mineral interest is relative to the potential for resource development in that area. It is always a good practice to check with neighbors and friends who hold mineral interests, real estate agents with knowledge of mineral estates and individuals within the oil and gas industry to compare what cash bonuses are being offered. There are also many mineral lease internet forums that might be helpful.

***Q. I don't own the mineral estate on my property and a company wants to drill on my land. Can I stop them? What are my options?***

**A.** It is not uncommon for part or all of the mineral estate to have been severed from the surface ownership at the time of the land sale. Idaho applies the common law principle that the mineral estate is dominant over the surface estate, and surface owners must allow a reasonable portion of their land to be used for drilling and production. The mineral interest owner has a right of reasonable access but is subject to obligations of reasonable accommodation, and is responsible for any damages to the surface estate.